

This case is before the Board for the second time. In a January 23, 2005 decision, the Board affirmed the denial of appellant's claim that he sustained an emotional and heart condition

due to factors of his federal employment.<sup>1</sup> An Office hearing representative found that appellant had established as compensable employment factors the fact that he had pesticide exposure in 1987; frequent schedule changes with extraordinarily varied hours prior to 1996; and the general stressful demands of air traffic control work. The hearing representative found, however, that appellant failed to submit sufficient medical evidence to establish an emotional condition resulting from these compensable employment factors. The findings of fact and conclusions of law adopted in the Board's prior decision are hereby incorporated by reference.

The record establishes that appellant's air traffic control duties involved relaying information, such as providing weather briefings and other monitoring duties to aircraft. Appellant was not responsible for the live and direct control of aircraft, nor was he responsible for providing taxing, take-off or landing instructions to pilots. He was medically disqualified from air traffic control duties in December 2000. Appellant worked modified duties until he retired on disability in July 2001.

On January 21, 2004 appellant requested reconsideration. In a December 17, 2003 report, Dr. Stephen W. Siebert, a Board-certified psychiatrist, to whom appellant was referred by his attorney, provided Axis I diagnoses of depressive disorder; alcohol abuse, in remission and psychological factors affecting a physical condition. Dr. Siebert found no history or medical evidence of any significant medical or psychiatric disorder prior to appellant's employment as an air traffic controller. He found that there was evidence from appellant's history, medical records, current examination and standardized psychological testing of several psychiatric disorders, including depression, alcohol abuse and psychological factors affecting a physical condition. Dr. Siebert advised that the latter diagnosis was applied when individuals have a stress-related psychological response that influenced the course or exacerbated the symptoms of an underlying medical condition. Appellant alleged that his rotating shift work resulted in ongoing work-related stress. Dr. Siebert also noted that appellant, subsequent to his employment as an air traffic controller, began to drink alcohol excessively, smoke heavily and gain weight. Since that time, appellant has been diagnosed with multiple chronic medical problems, including hypertension and arteriosclerotic cardiovascular disease, conditions associated with occupationally-related stress. Dr. Siebert opined that appellant's Axis I psychiatric disorders were causally related to his job-related stress and that his psychological condition has exacerbated or aggravated several of his Axis III medical conditions which included obesity, hypertension and coronary artery disease. He noted that his opinion was supported by Drs. Cusano and Rosenberg.

By decision dated April 26, 2004, the Office denied modification of its June 14, 2002 decision.

In a letter dated February 2, 2005, appellant requested reconsideration of the Office's April 26, 2004 decision.

In a January 10, 2005 report, Dr. Leonard Goldstein, a licensed clinical psychologist, diagnosed dysthymic disorder, alcohol abuse in remission, psychological factors affecting a

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<sup>1</sup> Docket No. 02-2079 (issued January 23, 2003).

physical condition and avoidant/dependent personality traits. He identified the following factors as creating significant stress that adversely affected appellant's health: (1) frequent shift changes; (2) managerial issues creating conflicting duties and responsibilities; and (3) the general stressful duties of an air traffic controller. Appellant's adverse health conditions were noted as hypertension, diabetes, cardiac condition leading to bypass surgery, obesity, nicotine addition and alcohol abuse. Dr. Goldstein opined that frequent shift changes and rotating days off made it difficult to have a predictable schedule and, therefore, planning for normal family and social life events was problematic. Exacerbating this problem was the disturbance in circadian rhythms and use of alcohol as a sleep aid in the face of rotating shifts. He opined that ultimately, these problems contributed to appellant's divorce in 1980. With respect to the management issues and policies as being a source of stress, Dr. Goldstein related that appellant was made a temporary supervisor and was required to write up annual reviews on persons he had only known in a supervisory capacity for a few months and who had been (and would be again) his colleagues a short while before. He indicated that appellant was forced to review the wife of his supervisor, which led to some antagonism between them and was a source of ongoing stress which led appellant's eating, drinking and smoking to become further problematic. With respect to the stressful duties of an air traffic controller, Dr. Goldstein cited to reference materials which documented the main sources of job stress indicated by air traffic controllers. He advised that it was evident from the literature that the job of an air traffic controller entailed high psychological and physical demands and high levels of responsibility while at the same time being subjected to considerable external control and limited personal flexibility. Dr. Goldstein stated that this was a formula for high stress.

Dr. Goldstein opined that in light of appellant's particular psychological dynamics, both the identified particular job stressors and the general occupational stressors related in the literature, resulted in a particular pattern of coping which led to an insidious cycle of increasing stress-related negative health consequences. Based on record review, psychological testing, medical opinion and literature review, Dr. Goldstein opined that appellant's identified employment factors were causally related to his emotional and physical disorders. He explained that appellant had no prior history of physical or psychological disorder before his work as an air traffic controller; there was ample evidence establishing the existence of both medical and psychological disorders which were typical of stress-induced difficulties; and appellant identified both specific duties and conditions as well as general occupational factors that caused or contributed to the diagnosed disorders.

By decision dated May 13, 2005, the Office denied modification of its April 26, 2004 decision.

On May 10, 2006 appellant requested reconsideration. In a May 8, 2006 report, Dr. John R. Lion, a Board-certified psychiatrist, noted his evaluation of May 2, 2006. He diagnosed dysthymic disorder and identified passive-aggressive personality traits. Dr. Lion opined that appellant's dysthymia was causally related to the stress of the work environment "in general and the above specific incidents in particular." In his report, Dr. Lion noted that appellant's workload, while not involving direct and live control of planes in the air, involved furnishing pilots with time clearances and void times and relaying control information to nontowered smaller airports in the New England area. Dr. Lion noted that appellant described

several incidents which characterized the stressfulness of his work. These incidents occurred “sometime between 1997 and 1998,” “sometime in the mid 1980’s” and “another occasion” whereby appellant’s advisory’s were either ignored or discarded by the pilots and had disastrous results. Appellant additionally noted that when the Bridgeport facility first became operational, much overtime was required and frequent shift changes occurred. Dr. Lion also noted that, although he admitted to drinking prior to his employment with the employing establishment, his work schedule often led to evenings and weekends where appellant was alone and where he drank excessively.

By decision dated August 9, 2006, the Office denied modification of its prior decision of May 13, 2005.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>5</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>6</sup>

In establishing the causal relationship between the employment and the injury, the Office usually relies on a physician’s opinion as to whether there is a causal relationship between the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Tracy P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>6</sup> *Id.*

claimant's diagnosed condition and the implicated employment factors.<sup>7</sup> This rationalized medical evidence must be based on a complete factual and medical background of the claimant,<sup>8</sup> and must be one of reasonable medical certainty,<sup>9</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

In its prior decision, the Board affirmed the Office's decision which found that appellant had identified compensable work factors with respect to pesticide exposure in 1987; frequent schedule changes and requirement to work extraordinarily varied hours prior to 1996; and the general stressful demands of air traffic control work. Following further development, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an emotional condition due to these employment factors.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained an emotional condition due to his accepted employment factor(s).

In a December 17, 2003 report, Dr. Siebert opined that appellant's psychiatric disorders were causally related to his job-related stress and that his psychological condition has exacerbated or aggravated several of his medical conditions. However, he did not provide a rationalized medical opinion based on a proper factual and medical background, explaining his opinion on causal relationship or otherwise relating his diagnosis to the factors found compensable in this case. Dr. Siebert noted that appellant had no history or medical evidence of any significant medical or psychiatric disorder prior to his employment as an air traffic controller. However, neither the fact that appellant's condition became apparent during a period of employment, nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.<sup>12</sup> This diminishes the value of Dr. Siebert's opinion. He additionally found that there was evidence of several psychiatric disorders affecting a physical condition and explained that this happens when individuals have a stress-related psychological response that influences the course or exacerbates the symptoms of an underlying condition. While Dr. Lion noted that appellant felt his rotating shift work resulted in such stress,

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<sup>7</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>11</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>12</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

he failed to identify the reasons why frequent schedule changes and working of varied hours were responsible for appellant's condition aside from the fact that such condition(s) manifested itself after he began working as an air traffic controller. For these reasons, the Board finds the report of Dr. Siebert insufficient to establish that appellant sustained an emotional condition causally related to his compensable work factor.

On January 10, 2005 Dr. Goldstein opined that appellant's work factors caused or exacerbated his medical problems. He identified appellant's frequent shift changes and rotating shifts, the disturbance in circadian rhythms and use of alcohol as a sleep aid in the face of rotating shifts as a source of stress. While Dr. Goldstein explained that frequent shift changes and rotating shifts could be a source of stress by causing a disruption in appellant's circadian rhythms and how the use of alcohol as a sleep aid could be problematic, he did not explain how these stressors caused or contributed to appellant's dysthymic disorder or other diagnosed conditions. Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.<sup>13</sup> Thus, Dr. Goldstein's report is of lessened probative value on this issue. He also related appellant's dysthymic disorder to management issues and policies, which were not accepted as established compensable factors in this case. Dr. Goldstein also attributed appellant's dysthymic disorder to the general stressful duties of an air traffic controller by relying on studies conducted of air traffic controllers. The Board notes that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.<sup>14</sup> Dr. Goldstein did not sufficiently explain how a specific study applied to appellant's particular situation. Moreover, other than the shift schedule and temporary supervisory duties previously discussed, Dr. Goldstein does not identify the specific factors of appellant's job as an air traffic controller which appellant had implicated as a source of his work-related condition. The record established that appellant's position did not involve the responsibility for the live and direct control of aircraft. Thus, Dr. Goldstein's general reliance on studies conducted of air traffic controller would not necessarily be applicable to appellant's particular situation. Dr. Goldstein's report is not based on an accurate factual background of appellant's job as an air traffic control specialist and does not contain a reasoned explanation as to how appellant's dysthymic disorder is causally related to the implicated factors of employment.<sup>15</sup> Thus, Dr. Goldstein's report is of diminished probative value.

In a May 8, 2006 report, Dr. Lion opined that appellant's dysthymic disorder was causally related to the work environment "in general and the above specific incidents in particular." He described several incidents which appellant characterized as being part of the stressfulness of his job, noted that appellant had engaged in frequent overtime and shift changes and that his drinking became a problem. However, Dr. Lion's report is deficient in that he did

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<sup>13</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>14</sup> *See Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>15</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

not explain the reasons why the compensable employment factor(s) caused or contributed to appellant's dysthymic disorder. Moreover, Dr. Lion based his report in large part on a history of employment incidents at work which were not accepted as compensable factors in this case.<sup>16</sup>

The Board finds that the reports of Drs. Siebert, Goldstein and Lion are insufficient to meet appellant's burden to establish that he sustained an emotional condition causally related to the accepted compensable factors.

### **CONCLUSION**

Appellant has not met his burden of proof in establishing that he developed an emotional condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 9, 2006 is affirmed.

Issued: May 18, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>16</sup> See *George Tseko*, 40 ECAB 948 (1989) (finding that the factual information related by a physician, who reported only that the claimant was subjected to supervisory harassment without identifying specific events of harassment and the times and places at which they occurred in sufficient detail, was too vague to support the claim).